

ESTATE OF LUCILLE MATHILDA CALLOUS LEG IRELAND

IBIA 77-36

Decided July 21, 1977

Appeal from an Administrative Law Judge's order denying claim after rehearing.

Reversed.

1. Indian Probate: Claim Against Estate: Care and Support

A general promise of compensation given by decedent for care and support of decedent's daughter is not invalid or unenforceable merely because specific sums or terms of compensation were not recited in the promise.

APPEARANCES: William C. Kelsch, Esq., Kelsch, Kelsch and Tudor, Mandan, North Dakota, for Appellant; Robert E. Lundwall, Esq., Aurora, Colorado, for Appellee.

OPINION BY ADMINISTRATIVE JUDGE HORTON

This is an appeal concerning a denial of a claim against a deceased Indian's trust estate. The procedural background of the case is as follows:

Lucille Mathilda Callous Leg Ireland, deceased Sioux Indian of the Standing Rock Indian Reservation (U-6418), died intestate on June 10, 1968. A probate hearing was held at Fort Yates, North Dakota, on October 29, 1968, by Administrative Law Judge Frances C. Elge. An order determining heirs was entered November 13, 1968, in which decedent's only daughter, Phyllis K. Ireland, was awarded full interest in the estate. The foregoing order disallowed a claim against the estate made by Laura Silk, appellant herein, whom the record shows provided sole care and support for decedent's daughter from the time of her childhood to majority. Judge Elge denied appellant's claim on grounds that she failed to prove by clear and convincing evidence that there

was a promise by decedent to compensate the claimant and that compensation was expected. This restriction on the allowance of claims for care and support had been established by Departmental regulation. See 43 CFR 4.250(d) (previously 25 CFR 15.23(d)).

Laura Silk, a/k/a Laura Yellow or Fast Horse Silk, filed a petition for rehearing on January 10, 1969, which was denied by Judge Elge by order dated April 14, 1970. A timely appeal was submitted by Laura Silk, through counsel, to this Board which by decision dated March 19, 1971, reversed Judge Elge's order denying claimant's petition for rehearing and remanded the case for further proceedings to conclusively prove or disprove the validity of Laura Silk's claim (IBIA 71-6).

Judge Elge conducted a rehearing at Fort Yates on June 23, 1971. An unfortunate lapse of 5-1/2 years transpired before entry of an order after rehearing. Thus, on January 6, 1977, Judge Elge again denied appellant's claim.

It is from Judge Elge's order of January 6, 1977, that this appeal is taken. Counsel for appellant alleges two errors of law below: 1) the administrative law judge erroneously concluded that a promise of compensation and expectation thereof were not supported by clear and convincing evidence, and 2) the administrative law judge erred in applying the requirements of 43 CFR 4.250(d) to a case in which care furnished by the claimant was to one other than the deceased. For reasons briefly set forth below, we agree with appellant's first contention on appeal and hold that Laura Silk is entitled to compensation from decedent's estate for care furnished the sole heir at law, Phyllis Ireland, appellee herein.

It is undisputed that Laura Silk operated a foster home for Indian children for many years. When Phyllis Ireland was 2 years old she was taken by her mother, decedent herein, to Laura Silk's home and left there. Mrs. Silk cared for and supported Phyllis until she reached 18 years of age in 1968. Welfare aid and social security benefits (available upon the death of Phyllis' father) were utilized to help meet the financial burden of raising decedent's daughter. Welfare support was terminated in 1962, however.

Appellant testified that Phyllis' mother visited her daughter on only several occasions throughout the period she was raised by her. Phyllis stated that she thought Mrs. Silk was her mother until she was about 6 or 7 years old.

During one of the mother's visits to her daughter, Mrs. Silk testified that she was assured by decedent that she would be compensated for taking care of Phyllis. No specific amount of money was referred to. Mrs. Silk was merely advised that when decedent "sold some land" she would be paid.

Promise of compensation by decedent to appellant was corroborated by the testimony of the deceased's uncle, George Afraid of Hawk. He testified that the deceased asked him to help her sell some land, in which they each held a one-half interest. She told him she wanted to sell the land to raise money to pay hospital bills and to give some money to Mrs. Silk for taking care of Phyllis. George Afraid of Hawk made application for sale of the land, but Phyllis' mother died before consummating a sale.

In her order denying appellant's claim after rehearing, Judge Elge concluded that "the testimony of the claimant with respect to an agreement between her and the decedent was uncertain as to time and vague as to discussion." The alleged promise of compensation was characterized in the order as lacking "concreteness" and "far from being clear and convincing" as required by regulation.

[1] We view the evidence in this case as incontrovertible that there existed a general promise of compensation by decedent to appellant for care given to decedent's daughter. The fact that specific sums of compensation or other terms were not included in the promise does not render the claim invalid or unenforceable.

Counsel for appellant has itemized a final claim for the reasonable value of services furnished by her, taking into account reductions for social security benefits received in Phyllis' behalf. The amount claimed (\$2,117) is computed on the basis of \$60 per month from 1962 to 1968 (the period of time support was provided by claimant without welfare assistance). Although appellant makes deductions for social security benefits received after 1962, her final claim includes \$20 per month from 1962-1968 which she alleges is owed her for cash payments made to Phyllis from social security during such period. Appellee's testimony contradicts this allegation (Tr. of Reh., p. 40), but she admits receiving \$20 for 8 months in 1966 (Tr. of Reh., 42-43). The evidence therefore justifies a net reduction for social security payments from appellant's claim in the amount of \$2,643 rather than \$1,483 as suggested in appellant's brief. We accept as valid the remainder of appellant's formula for recovery and conclude that she is entitled to compensation from decedent's estate in the amount of \$957 as shown below:

Total child care at \$60 per month from	
September 1962 to March 1968	= \$3,960
Less social security received (\$2,803)	= \$1,157
Plus share of social security given to	
Phyllis at \$20 per month for 8 months	= \$1,317
Less remainder of social security when	
Phyllis was away from home at school (\$360)	= \$ 957

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, IT IS HEREBY ORDERED that the Order Denying Claim After Rehearing issued by Administrative Law Judge Frances C. Elge on January 6, 1977, be, and the same is REVERSED. IT IS HEREBY FURTHER ORDERED that after the expiration of sixty (60) days from the date of this decision, unless an appeal therefrom has been filed in Federal District Court, the Superintendent of the Standing Rock Indian Agency, Fort Yates, North Dakota, effect payment of \$957 to Laura Silk from proceeds in the estate of Lucille Mathilda Callous Leg Ireland.

This decision is final for the Department.

Done at Arlington, Virginia.

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Wm. Philip Horton  
Administrative Judge

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Alexander H. Wilson  
Chief Administrative Judge

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Mitchell J. Sabagh  
Administrative Judge